

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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SO. DIST. OF GA.

UNITED STATES OF AMERICA)

v.)

RYAN M. VERCH,)

Defendant.)
_____)

CASE NO. CR407-168

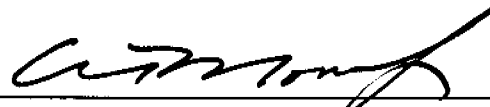
O R D E R

Before the Court is Defendant's Motion to Strike Surplusage in the Indictment. (Doc. 14.) For the following reasons, Defendant's Motion is **DENIED**.

Defendant has been charged in a four-count indictment with the following offenses: Aggravated Sexual Abuse of a Minor in violation of 18 U.S.C. § 2241 (Count 1); Sexual Exploitation of Children in violation of 18 U.S.C. § 2251 (Count 2); Transporting or Shipping Child Pornography in violation of 18 U.S.C. § 2252A(a)(1) (Count 3); and Possession of Child Pornography in violation of 18 U.S.C. § 2252A(a)(5) (Count 4). Counts 1, 2, and 3 of the indictment include language stating that the victim was a minor child who "had not attained the age of three years." Defendant asks the Court to remove from the indictment any reference to the exact age of the victim.

Federal Rule of Criminal Procedure 7(d) provides that, "upon the defendant's motion, the court may strike surplusage from the indictment or information." Fed. R. Crim. P. 7(d). However, a motion to strike surplusage should be denied "unless it is clear that the allegations are not relevant to the charge and are inflammatory and prejudicial." United States v. Awan, 966 F.2d 1415, 1426 (11th Cir. 1992) (quoting United States v. Huppert, 917 F.2d 507, 511 (11th Cir. 1990)). In this case, the Government must prove not only the age of the victim, but also, with respect to Counts 2, 3, and 4, that Defendant knew that he was producing, distributing and possessing pornography involving a child below a certain age. The Court finds that the victim child's actual age is relevant to both of these elements. Accordingly, Defendant's Motion is **DENIED**.

SO ORDERED this 13th day of November, 2007.



WILLIAM T. MOORE, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA